v. *Glyn*, 1 Atk. 469. In many cases this led to lamentable results. When, for example, after a devise or bequest, words indicative of hope or confidence were added, with an indefinite object, the trust, which the courts by the peculiar reasoning adopted were bound to find, failed entirely, and the first taker became constructive trustee for the heirs or next of kin. Thus the testator's evident intention was defeated by a rule, whose only excuse for existence was that it carried out such intention.

Happily there is to-day a reaction from this unfortunate kindness. A recent illustration of this is furnished by the case *In re Williams*, [1897] 2 Ch. 12. There the English Court of Appeal held that a devise by a testator absolutely to his wife, "in the fullest trust and confidence that she will carry out my wishes in the following particulars," did not impose a legal obligation on the wife, and that she took unrestricted. In the course of his opinion, A. L. Smith, L. J., makes an exceedingly pertinent remark which indicates what is the wholesome and reasonable rule to apply in this class of cases. He says, "I cannot understand, if he had intended an obligation by way of trust, why he did not say so."

TRADE SECRETS. — The development of the law in regard to the relations between confidential servants of an inventor and their master is well illustrated in the recent case of *Thum Co.* v. *Tloczynski*, 72 N. W. Rep. 140 (Mich.) The plaintiff is a manufacturer of a fly-paper by a secret though unpatented process. The defendant learned the secret while in the plaintiff's employ; and a decree was granted restraining him from communicating that secret to a third party. The result reached is not a new one; as long ago as 1851, it was held that an employee learning the recipe of a medicine from his master was not at liberty to make use of his knowledge either in imparting it to another or in starting a rival business of his own. *Morison* v. *Moat*, 9 Hare, 241. And more recent authority in America seems to have established complete equity jurisdiction over this class of cases. *Tabor* v. *Hoffman*, 118 N. Y. 31.

The grounds for the assumption of control by equity over these questions between inventor and employee are not satisfactorily determined. In cases where there is an express contract by the employee not to reveal the secrets of the employment the matter is simple. Often, however, as in the case at present under consideration, there is no such contract; and here, although the court uses language suggesting that there was a breach of confidence, it seems to feel the necessity of implying a contract. The theory of implied contracts, however, is overworked; and in the present case there seems to be a remedy which does not necessitate taking liberties with the facts. This remedy is the ordinary one for breach of trust. It does not depend on any contract, express or implied; for where circumstances create a fiduciary relation it makes no difference whether the trustee has contracted to carry out the trust or not. Many trusts are created in which the agreements between the parties would be held invalid for want of consideration if looked upon as common law contracts; yet the fiduciary is held bound as a trustee. The inquiry to be made in the present case is whether the confidential employee stands in the position of a trustee, so that in revealing his secret he is guilty of bad faith in the view of equity; and the answer must be that in all respects he does stand in such a position. The *res* which he holds in trust is his knowledge of his employer's secret; this knowledge is intrusted to

him by his employer; and he holds it subject to the obligation of using it solely for his employer's benefit during the service, not betraying it at any time to a stranger to the employment, and not in any way using it against the employer after the term of service is ended. This doctrine was carried to its logical development in *Morison* v. *Moat*, *supra*. There it was held that, if the person who receives the secret from the confidential employee is a purchaser for value without notice, he has a full right to use the secret; but if, on the other hand, he is a mere volunteer deriving benefit under a breach of trust, he acquires no beneficial interest in the secret. It seems then that the confidential employee is regarded as a trustee as fully as if the *res* had been, for instance, real estate or stocks and bonds; and the purchaser from him is looked upon in the same light as the purchaser from a trustee of an estate. It is suggested that this is the true principle to apply to the present case; even if no grounds for implying a contract had appeared, the defendant could be restrained from committing a breach of trust.

MAY THE STATE IMPEACH ITS OWN WITNESSES? — That a party cannot impeach the character of his own witness seems to be an established principle of the common law. A generally recognized exception to this rule, however, permits the impeachment of an attesting or subscribing witness to a deed or will. The Supreme Court of Vermont, in a recent case, *State* v. *Slack*, 38 Atl. Rep. 311, has extended this exception by holding that the State may impeach its own witnesses in criminal cases. Apparently there is no authority for such a proposition. It is believed, furthermore, to be untenable on principle.

The reason usually assigned by the courts for making an exception in the case of witnesses to an instrument is that, inasmuch as a party is compelled by law to call such witnesses, he does not therefore present them to the court as worthy of belief. Precisely the same ground underlies the decision in *State* v. *Slack*, *supra*. The court holds it to be "the duty of the State to produce and use all witnesses within reach of process, of whatever character, whose testimony will aid the jury in arriving at the truth, whether it makes for or against the accused, and that, therefore the State is not to be prejudiced by the character of the witnesses it calls." In another place the court says that "the State is bound to call all the witnesses," not being "at liberty to choose and to call whomsoever it will."

If a literal construction of this language be adopted, the court certainly seems to regard it as obligatory upon the State to call every possible witness, including the defendant and the defendant's witnesses. Clearly, in many instances, such a rule could not possibly be put into practice. Even where practicable, it would often result in a needless waste of time and money. Conceivably the court merely means that the number of witnesses in a given case being necessarily limited to such as happen to be cognizant of the facts the State is consequently obliged to call such persons, and should therefore be entitled to impeach their character. This reasoning, however, would operate equally well in favor of the prisoner and both parties to a civil suit; and were such a doctrine thus extended by the courts, the general principle that a party cannot impeach his own witness would have no significance whatever.

In granting to the State this privilege of impeaching its own witnesses,